

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Document #

26

U.S.C.A. #

U.S.D.C. #

07-cv-5653

JUDGE:

VM

DATE:

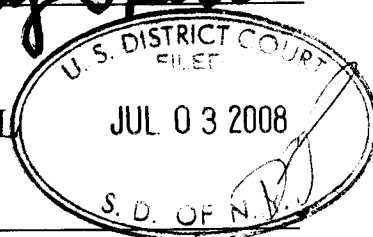
July 3, 2008

Hurdner

-v-

Rivera, et al

INDEX TO THE RECORD ON APPEAL



PREPARED BY (NAME): THOMAS R. PISARCZYK
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DISTRICT COURT DOCKET ENTRIES

DOCUMENT DESCRIPTION

DOC. #

CLERK'S CERTIFICATE

Order

12

SEE ATTACHED LIST OF NUMBERED DOCUMENTS

Pro Se Memorandum

22

** ONLY CIRCLED DOCUMENTS ARE INCLUDED **

** ALL OTHERS MISSING AT THIS TIME **

☒ Original Record☐ Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.
 for the Second Circuit on the 320 Day of July, 2008.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

U.S.C.A. # _____

Mardner

U.S.D.C. # *07-cv-5653*

-v-

Rivera, et al

JUDGE: *VM*

DATE: *July 3, 2008*

Clerk's Certificate

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered _____ Through _____, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

<u>Date Filed</u>	<u>Document Description</u>
<i>10/24/07</i>	<i>order</i>
<i>01/08/08</i>	<i>pro se memo</i>
	BALANCE OF FILE MISSING AT THIS TIME

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this *30th* Day of *July* In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this *232ND* year.

J. Michael McMahon, Clerk

By *[Signature]*
Deputy Clerk



APPEAL, CLOSED, PLRA, PRO-SE

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:07-cv-05653-VM
Internal Use Only

Gardner v. Rivera et al
Assigned to: Judge Victor Marrero
Cause: 42:1983 Civil Rights Act

Date Filed: 06/14/2007
Date Terminated: 02/25/2008
Jury Demand: None
Nature of Suit: 555 Prisoner: Prison Condition
Jurisdiction: Federal Question

Date Filed	#	Docket Text
06/14/2007	1	Application for the Court to Request Counsel. Document filed by Phillip Jerome Gardner.(mbe) (Entered: 06/29/2007)
06/14/2007	2	ENDORSEMENT on Declaration in Support of Request to Proceed In Forma Pauperis, I.F.P. REQUEST IS GRANTED. (Signed by Judge Kimba M. Wood on 6/13/2007) (mbe) (Entered: 06/29/2007)
06/14/2007	3	Magistrate Judge Douglas F. Eaton is so designated. (mbe) (Entered: 06/29/2007)
06/14/2007	3	COMPLAINT against Rivera, Rosado, John Doe, James Walsh. Document filed by Phillip Jerome Gardner.(mbe) (Entered: 06/29/2007)
08/07/2007		MEMORANDUM TO THE DOCKET CLERK: Prisoner Litigation Reform Act applies. (cd) (Entered: 08/10/2007)
09/13/2007	4	ORDER: the 1 Motion of petitioner Phillip Gardner for Appointment of Counsel is DENIED without prejudice. (Signed by Judge Victor Marrero on 9/12/07) (db) (Entered: 09/13/2007)
09/20/2007	5	ENDORSED LETTER addressed to Judge Victor Marrero from Susan H. Odessky dated 9/19/2007 re: seeking an extension of time until 11/1/2007 for dft Rivera to answer or respond to the complt. ENDORSEMENT: Request granted. The time for dft to answer or move with respect to the complt in this action is extended to 11/1/2007. (Signed by Judge Victor Marrero on 9/20/2007) (jar) (Entered: 09/21/2007)
09/25/2007	6	ACKNOWLEDGMENT OF SERVICE of summons and complaint. Rosado served on 9/6/2007, answer due 9/26/2007. Document filed by Phillip Jerome Gardner. (djc) (Entered: 09/26/2007)
09/25/2007	7	ACKNOWLEDGMENT OF SERVICE of summons and complaint. James Walsh served on 8/31/2007, answer due 9/20/2007. Document filed by Phillip Jerome Gardner. (djc) (Entered: 09/26/2007)
09/26/2007	9	MOTION to Appoint Counsel. Document filed by Phillip Jerome Gardner.(cd) (Entered: 10/15/2007)
10/10/2007	8	SUMMONS RETURNED EXECUTED Summons and Complaint served. Rivera served on 9/19/2007, answer due 10/9/2007. Document filed by Phillip Jerome Gardner. (jmi) (Entered: 10/15/2007)
10/22/2007	10	ORDER denying 9 Motion to Appoint Counsel without prejudice. (Signed by Judge Victor Marrero on 10/18/07) (db) (Entered: 10/23/2007)
10/22/2007	11	ENDORSED LETTER addressed to Judge Victor Marrero from Inna Reznik dated 10/18/07 re: counsel for defendants request an extension of time until 11/1/07 for defendants Rosado and Walsh to answer or otherwise respond to the complaint. ENDORSEMENT: Request GRANTED. The time for defendant(s) to answer or otherwise move with respect to the complaint in this action is extended to 11/1/07. (Signed by Judge Victor Marrero on 10/19/07) (dle) (Entered: 10/23/2007)
10/24/2007	12	ORDER: This Court can only make rulings based on motions filed by and regarding either plaintiff or those defendants who are properly served. Therefore, if the actions about which Brown complains are related to the current lawsuit, then the Court will deal with those complaints in the Course of Brown's prosecution of the lawsuit. If the actions about which Brown are unrelated to the current lawsuit. Brown is reminded that before filing a federal action relating to prison issues, the Prison Litigation Reform Act requires him to exhaust any available administrative grievance procedure within the State Department of Correctional Services. Brown may wish to contact the Pro-Se Office for assistance. Attached to Brown's letter was a collection of documents that appeared to form a part of plaintiff's medical records. These records will be returned to him. So Ordered. (Signed by Judge Gerard E. Lynch on 10/24/07) (js) (Entered: 10/24/2007)
11/01/2007	13	NOTICE OF APPEARANCE by Inna Reznik on behalf of Rivera, Rosado, James Walsh. (db) (Entered: 11/05/2007)
11/01/2007	14	MOTION to Dismiss complaint pursl to Rule 12(b)(1) and Rule 12(b)(6). Document filed by Rivera, Rosado, James Walsh. (docmt received in night dep.on 11/1/07 at 8:14 pm)(djc) (Entered: 11/05/2007)
11/01/2007	15	NOTICE to Pro Se Litigants Opposing Motion to Dismiss or Motion for summary Judgment. Document filed by Rivera, Rosado, James Walsh.(docmt filed in nightdeposit on 11/1/07 at 8:14 p.m.) (djc) (Entered: 11/05/2007)
11/01/2007	16	DECLARATION of Karen Bellamy in Support re: 14 MOTION to Dismiss. Document filed by Rivera, Rosado, James Walsh. (djc) (Entered: 11/05/2007)
11/01/2007	17	DECLARATION of Inna Reznik in Support re: 14 MOTION to Dismiss. Document filed by Rivera, Rosado, James Walsh. (djc) (Entered: 11/05/2007)
11/01/2007	18	MEMORANDUM OF LAW in Support re: 14 MOTION to Dismiss. Document filed by Rivera, Rosado, James Walsh. (djc) (Entered: 11/05/2007)
11/15/2007	19	AMENDED COMPLAINT amending 3 Complaint against Mr. Sgt. Semmel, Mr. Lieutenant Rielly, Rivera, Rosado, James Walsh.Document filed by Phillip Jerome Gardner. Related document: 3 Complaint filed by Phillip Jerome Gardner.(pl) (Entered: 11/27/2007)
11/30/2007	20	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement). Referred to Magistrate Judge Douglas F. Eaton. (Signed by Judge Victor Marrero on 11/29/07) (kco) (Entered: 12/03/2007)

12/14/2007	 21	ORDER: Plaintiff must arrange for the summons and Amended Complaint to be served upon Sgt. Semmel and Lt. Reilly by 3/14/2008. I direct the Pro Se Office to provide plaintiff with sufficient summonses and forms for service upon Sgt. Semmel and Lt. Reilly. If Mr. Gardner does not, by 3/14/2008, send me proof of service or good reason for failure to make service, then I will recommend that the District Judge dismiss this lawsuit as to any unserved defendant. Case Management Conference set for 1/31/2008 at 10:00 PM before Magistrate Judge Douglas F. Eaton. I direct AAG Reznik to arrange for the prison authorities to bring Mr. Gardner to a telephone at 10:00 a.m. on 1/31/2008. I direct AAG Reznik to come to my chambers (Room 1360 at 500 Pearl Street) a few minutes before 10:00 a.m. (Signed by Magistrate Judge Douglas F. Eaton on 12/14/2007) (jar) (Entered: 12/14/2007)
01/08/2008	22	PRO SE MEMORANDUM dated 1/10/08 re: CHANGE OF ADDRESS for Phillip Jerome Gardner. New Address: 00-A-1955, Great Meadow Corr. Fac., Box 51, Comstock, NY, 12821-0051. (tro) (Entered: 01/15/2008)
02/01/2008	 23	MEMORANDUM AND ORDER: I told Mr. Gardner that the dismissal motion will probably be granted on default unless he prepares a new opposition and mails it to Judge Marrero no later than February 22, 2008, along with a certification that he is mailing a true copy to AAG Reznik (her address appears on the last page of this 2/1/08 Memorandum and Order). I hereby direct AAG Reznik to serve and file any reply papers by March 6, 2008. I find that the claims in the case at bar have no substance, and therefore I deny his request for appointed counsel. Set Deadlines/Hearing as to 14 MOTION to Dismiss: (Replies due by 3/6/2008.) (Signed by Magistrate Judge Douglas F. Eaton on 2/1/08) Copies Mailed By Chambers.(tro) (Entered: 02/01/2008)
02/25/2008	24	DECISION AND ORDER: for reasons further set forth in said Order, the 14 Motion of defendants herein to Dismiss the Complaint of Phillip Jerome Gardner is GRANTED. (Signed by Judge Victor Marrero on 2/25/08) (db) (Entered: 02/25/2008)
02/26/2008		CASE NO LONGER REFERRED to Magistrate Judge Magistrate Judge Douglas F. Eaton. I hereby close the above Order of Reference for magistrate judge statistical purposes. Reason: By Decision and Order dated 2/25/08, Judge Marrero granted defendants' motion to dismiss the complaint. (ae) (Entered: 03/26/2008)
06/04/2008	25	NOTICE OF APPEAL from 24 Order on Motion to Dismiss. Document filed by Phillip Jerome Gardner. Copies mailed to attorney(s) of record: Attorney General, NYS. (tp) Modified on 6/30/2008 (tp). (Entered: 06/30/2008)
06/04/2008		Appeal Remark as to 25 Notice of Appeal filed by Phillip Jerome Gardner. IFP GRANTED 6/13/07. (tp) (Entered: 06/30/2008)
06/30/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 25 Notice of Appeal. (tp) (Entered: 06/30/2008)
06/30/2008		Transmission of Notice of Appeal to the District Judge re: 25 Notice of Appeal. (tp) (Entered: 06/30/2008)